

CHRISTOPHER A. JONES

POB 1989

ELY, NV, 89301

PLAINTIFF PRO SE

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CLERK/US DISTRICT COURT DISTRICT OF NEVADA	
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U.S. DISTRICT COURT

DISTRICT OF NEVADA

CHRISTOPHER A. JONES,

PLAINTIFF, CASE NO. 3:10-CV-00162-LRH-VPC

VS.

HOWARD SKOLNIK, ET AL., MOTION TO STRIKE
DEFENDANTS.

COMES NOW, THE PLAINTIFF IN THIS MATTER,
PROCEEDING IN A PRO SE CAPACITY, TO MOVE THIS
HONORABLE COURT TO STRIKE THE DEFENDANTS'
REPLY TO OPPOSITION TO MOTION TO DISMISS AT PAGE
6 SECTION D, LINES 23 THROUGH 29 AS NEW
MATERIAL SUBMITTED IN A REPLY, (#53).

THIS MOTION IS SUBMITTED PURSUANT TO LR 7-2(a)
AND IS SUPPORTED BY THE FOLLOWING POINTS, AUT-
HORITIES AND PAPERS ON FILE IN THIS MATTER.

POINTS AND AUTHORITIES

I. NATURE OF MOTION

A. THE DEFENDANTS PRESENTED NEW MATERIAL
ISSUES AND ARGUMENT TO SHOW PREJUDICE
AS MANDATED TO SHOW A NEED TO SEVERE
THAT THEY OMITTED FROM THE INITIAL MOTION

II. ARGUMENT

A. THE DEFENDANTS PRESENTED NEW MATERIAL ISSUES AND ARGUMENT TO SHOW PREJUDICE AS MANDATED TO SHOW A NEED TO SEVER THAT THEY OMITTED FROM THE INITIAL MOTION

AS ARGUED IN OPPOSITION TO DEFENDANT'S TRANT AND MASON'S MOTION TO DISMISS ARGUING IN THE ALTERNATIVE, MISJOINDER PER FRCP 20 AND 21, THAT SEVERANCE IS NECESSARY, THE PLAINTIFF AT (#49, pp. 19-20) INFORMS ALL CONCERNED THAT THE DEFENDANTS FAILED TO ARGUE OR SHOW THE PREJUDICE TO A SUBSTANTIAL RIGHT.

CITING TO *SMUNGF HOLDINGS V. OLD COLONY VENTURES, I, INC.*, 918 F.SUPP. 343 (D. KAN. 1996) FOR THE PROPOSITION THAT A SHOWING OF PREJUDICE IS A MANDATORY ELEMENT.

THE PLAINTIFF IDENTIFIED A DEFICIENCY. THERE IS NO ROOM ALLOWED UNDER THE FOLLOWING BINDING AUTHORITIES FOR THE DEFENDANTS TO CURE THE DEFECT IN THEIR REPLY BRIEF.

CONTRARY TO THE DEFENSES CREATIVE MANIPULATION AT (#53, PAGE 6, LL 20-23) CITING IN PART:

PLAINTIFF TAKES EXCEPTION WITH DEFENDANTS [OMITTED] DISCUSSION ADDRESSING THE PREJUDICE

WHICH MIGHT OCCUR IF THE DISPARATE CLAIMS ...
 ARE PERMITTED TO PROCEED IN LITIGATION WITH
 THE CLAIMS PERTAINING TO DEFENDANTS TRANT
 AND MASON. (CO #162 AT 18).

DEFENDANTS [ANSWER] ACCORDINGLY ...
 (EMPHASIS ADDED)

THE PLAINTIFF'S IDENTIFYING THE DEFECT, DOES NOT
 OPEN THE DOOR FOR THE DEFENDANTS TO ANSWER ACC-
 ORDINGLY OR OTHERWISE ACCORDING TO NINTH CIRCUIT
 AUTHORITIES. THEY FAILED TO MAKE AN IMPORTANT
 SHOWING [AND] ARE STUCK WITH IT! THE PLAINTIFF
 SIMPLY OUTLINED THE DEFICIENCY AS PART OF HIS
 OPPOSITION.

AS CITED IN ELLINGSON V. BURLINGTON NORTHERN,
 INC., 653 F.2d 1327, 1332 (9TH CIR. 1981) (AN ISSUE
 ADVANCED ONLY IN A REPLY BRIEF PROVIDES THE OPPOS-
 ING PARTY NO OPPORTUNITY TO MEET THE CONTENTION);
 VON BRIMMER V. WHIRLPOOL CORP., 536 F.2d 838, 846
 (9TH CIR. 1976) (NEW MATERIAL DOESN'T BELONG IN A
 REPLY BRIEF, AND THE NEW MATERIAL IN A REPLY BRIEF
 TRANGRESSES AGAINST THE CANONS OF FAIR FORENSICS);
 WHITE V. CITY OF SPARKS, 341 F. SUPP.2d 1129, 1134
 (D. NEV. 2004) (PORTIONS OF A REPLY BRIEF ON A MOTION
 FOR PARTIAL SUMMARY JUDGMENT ARE PROPERLY STRICKEN
 WHERE AN ARGUMENT IS RAISED FOR THE FIRST TIME IN
 A REPLY BRIEF) AND, DEPARTMENT OF EDUC., STATE OF
 HAWAII V. BELL, 720 F.2d 1409 (9TH CIR. 1985)

(COURT DISREGARDED ARGUMENT RAISED IN REPLY BRIEF FOR THE FIRST TIME, WHICH WAS UNTIMELY)

BY THE DEFENDANTS OWN WORDS, AND OR ACTS, THEY CONCEDED THAT THEY OMITTED THE PREJUDICE ELEMENT FROM THEIR INITIAL MOTION ARGUING FOR SEVERANCE / MISJOINDER.

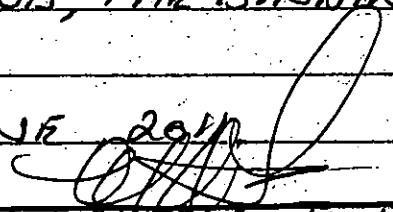
AND, BY THEIR OWN ADMISSIONS, SEEK TO [ANSWER] TO PUT FORTH ARGUMENT TO CURE SAID DEFECT.

ACCORDING TO THE ABOVE AUTHORITIES, SUCH A BELATED ATTEMPT CONSTITUTES [NEW MATERIAL] IN A REPLY BRIEF, AND AS SUCH, MUST BE STRICKEN PURSUANT TO WHITE, SUPRA.

III. CONCLUSION

THE PLAINTIFF'S MOTION SHOULD BE GRANTED AS SUPPORTED BY THE FACTS, AND, THE BINDING AUTHORITIES CITED HEREIN.

DATED THIS 26TH DAY OF JUNE 2011


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PLAINTIFF PRO SE

CERTIFICATE OF SERVICE

A TRUE COPY OF THIS MOTION WAS MAILED 6-26-11 TO THE FOLLOWING:

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